pect of the sixth occasion, it was of course not possible for anything to be done to effect service of the writ.

M/s. Rodyk & Davidson had referred to PSA the occasions of computer breakdown mentioned by Mr. Yip and PSA had confirmed that "there were computer shutdowns for short periods of time on the dates in question except October 6 1981." However, PSA explained that "the downtime was insignificant and did not in any way affect the Port Master's computer operations insofar as it concerned the issue of the list of vessels arriving and departing." Such information from PSA, at its lowest, cast serious doubts on the explanation given by Mr. Yip about the cause of the delay in the issue of the shipping lists by PSA.

Quite apart from what was said by PSA, I find the explanation given by Mr. Yip in his affidavit unsatisfactory. It did not appear from his affidavit that SAS was aware of the occasions (other than the fifth occasion) on which the Vessel called. If SAS was aware of these occasions, it did not appear that it had informed M/s. Rodyk & Davidson of the same. In his affidavit affirmed on December 4, 1981 in support of the application for renewal, Mr. P. Selvadurai mentioned only the fifth occasion on which the Vessel called at Singapore. In respect of the second occasion, the Vessel was here for about 2 full working days – 0030 hours on May 19 to 1140 hours on May 21, 1981. Mr. Yip did not explain whether his company received the shipping lists on May 19 and May 20, 1981, and if it did not receive them whether that was due to a computer breakdown in PSA on those days. If the shipping lists were not issued by PSA on those 2 days because of a computer breakdown and the issue of the shipping list on May 21, 1981 was delayed to about 4 p.m. by a computer breakdown (as alleged by Mr. Yip) then such a breakdown or breakdowns must truly be very major – a fact refuted by PSA. Further, in respect of the third and the fifth occasions, no information was given by Mr. Yip or anyone else as to whether the shipping lists issued by PSA on June 30, 1981, and October 5, 1981, respectively contained any information that the Vessel was expected to arrive in Singapore on those days.

In my view the plaintiff had not established any exceptional circumstance warranting a renewal of the writ. On the material before me I am not satisfied that during the second, third and fifth occasions on which the Vessel was here, though she was here for a short time on each such occasion, the plaintiff did not have an opportunity of serving the writ on her, if the matter of service of the writ had been pursued with reasonable diligence and reasonable steps had been taken. I therefore held that the defendants' application succeeded.

Order accordingly.

Solicitors: *Rodyk & Davidson; Emmanuel & Barker.*

VASUDEVAN v. ICAB PTE. LTD.

[O.C.J. (Chan Sek Keong J.C.) February 16, 1987]

[Singapore – Originating Summons No. 953 of 1986]

Company Law – Winding up – Duties of liquidator – Statutory and professional duties – Failure of liquidator to discharge statutory duty – Liquidator to pay costs – Companies Act (Cap. 185, Reprint), ss. 264, 307, 308(6) & 343(1).

Practice and Procedure – Costs – Winding Up of company – Application for deferment of dissolution of – Failure of liquidator to discharge statutory duty – Liquidator to pay costs – Companies Act (Cap. 185, Reprint), s. 264.

Company Law – Liquidator's statutory and professional duties.

On November 8, 1982 the plaintiff herein commenced an action in Suit No. 4851/82 against the defendants claiming damages at common law for injuries suffered. The said action was set down for trial on October 2, 1983. Sometime in November 1985, the solicitors for the defendants informed the solicitors for the plaintiff that the defendants had been wound up.

On August 5, 1986 the plaintiff filed this originating summons for an order that he be granted leave to continue proceedings against the company. On September 1, 1986 the plaintiff made an application by way of summons-in-chambers in this originating summons for an order under section 308(6) of the Companies Act (Reprint) that the dissolution of the defendants be deferred until after determination of the action in Suit No. 4851/82.

Thereafter on October 1, 1986, the plaintiff made another application by way of summons-in-chambers under section 307 of the Companies Act to have the dissolution declared void. All three applications came before the present court which declared, *inter alia*, the dissolution void and allowed the plaintiff to continue proceedings against the company.

The plaintiff's case was that he was entitled to the costs of the application to declare the dissolution void. The

liquidator's case was that he had performed his statutory duty and that in any case all the assets of the company had been distributed to the shareholders and that he no longer had any funds to meet an order for costs against the company or himself.

The present issue before the court was who should bear the costs of the application to declare the dissolution void.

Held: section 264 of the Companies Act provides that the property of a company shall, on its winding up, be applied *pari passu* in satisfaction of its liabilities (subject to the prescribed preferential payments). This is a statutory obligation which falls on the liquidator. It is not an absolute duty. On the other hand, where he is paid professionally to wind up a company, he must exercise a high standard of care and diligence commensurate with his professionalism;

(2) in the present case all the liabilities of the company had not been met prior to dissolution. *Prima facie*, the liquidator has failed to discharge his statutory obligation;

(3) since the liquidator has not discharged his statutory duty he should pay the costs of the application to declare the dissolution void.

Cases referred to:

(1) *Re Crookhaven Mining Co.* (1866) L.R. 3 Eq. 69.
(2) *Whiteley Exerciser Ltd.* v. *Gamage* [1898] 2 Ch. D. 405 C.A.
(3) *Pulsford* v. *Devenish* [1903] 2 Ch. 625.
(4) *Re Armstrong Whitworth Securities Co. Ltd.* [1947] Ch. 673.
(5) *Austin Securities Ltd.* v. *Northgate & English Stores Ltd.* [1969] 1 W.L.R. 529.

ORIGINATING SUMMONS.

Clive Heng for the plaintiff.

Toh Peng Ann for the liquidator.

Cur. Adv. Vult.

Chan Sek Keong J.C.: On November 8, 1982, the plaintiff herein commenced an action in Suit No. 4851/82 against the defendants claiming damages at common law for injuries suffered by the plaintiff as a result of an accident on or about October 2, 1981 in the course of his employment as a casual labourer. The said action was set down for trial on October 20, 1983. Sometime in November 1985, the solicitors for the defendants informed the solicitors for the plaintiff that the defendants had been wound up. A search by the solicitors for the plaintiff in the Registry of Companies showed that the defendants were dissolved as a company on or about April 22, 1985. In the meantime, the action had been fixed for hearing on October 15, 1986.

On August 5, 1986, the plaintiff filed this originating summons for an order that he be granted leave to continue proceedings against the company. On August 20, 1986, the liquidator filed an affidavit in which he stated that he was appointed a liquidator of the defendants pursuant to a special resolution to wind up the company voluntarily, passed by members at an extraordinary general meeting held on January 16, 1985; that on January 22, 1985 a notice of the special resolution to wind up the company was published in the *Singapore Monitor*; that on February 21, 1985 he caused to be published in the *Singapore Monitor* an advertisement in the usual form requesting all creditors to send their names and addresses with particulars of their debts or claims to him at his address; that on March 4, 1985, he caused to be published in the *Singapore Monitor* a notice of a Final General Meeting of the members of the company for the purpose of receiving an account from him showing the manner in which the winding up has been conducted and to hear any explanations that may be given at the Final General Meeting to be held on March 25; that on March 25, 1986, he lodged with the Registry of Companies and the Official Receiver a copy of the return by the liquidator relating to final meeting and its statement of accounts in accordance with section 308 of the Companies Act. The liquidator then stated that to the best of his knowledge and information, he had not from the date of appointment to the date of his resignation as liquidator on July 28, 1986 received any claim relating to the plaintiff's action in Suit No. 4851/82.

On September 1, 1986, the plaintiff made an application by way of summons in chambers in this originating summons for an order under section 308(6) of the Companies Act (Reprint) that the dissolution of the defendants be deferred until after determination of the action in Suit No. 4851/82. Both applications came before me for hearing on September 29, 1986. In respect of the application to defer the winding up, counsel for the plaintiff made a long submission on the law and argued that this was a proper case for such an order to be made on the basis of the decisions in *Re Crookhaven Mining Co*[1] and *Whiteley Exerciser Ltd.* v. *Gamage*[2]. In the first case, the proceedings were commenced for an order for a call upon holders of shares not fully paid up for the purpose of adjusting the rights of shareholders before but came on for hearing after the dissolution took effect. In the second case, the hearing had already commenced but the court was unable to complete the hearing and so had to adjourn it, after which the company was dissolved. Both of these cases

were ready for hearing but could not be heard because of the state of business of the court. These two cases had nothing to do with the court's power to defer the dissolution and therefore the application for this order must fail. However, as the present action had been set down for trial since October 1983 but could not be heard because of the court's calendar, I could then have simply given leave to the plaintiff to continue with the action. What would have happened would be that if the main action were heard and the plaintiff were to obtain judgment against the defendant, he would have a judgment against a non-existent company. In that situation, the plaintiff would then either have to make an application to dissolve the company in order to enforce the judgment against the company or to make a claim against the liquidator on some basis or other *e.g.* negligence or breach of statutory duty (a course of action which was referred to by North J. in the *Gamage* case[2] (at page 410)). I was then informed by counsel for the plaintiff that the application was a formal application in the sense that the company's liability, if any, would be met by the insurers, and that the insurers were not objecting to the application to defer or declare void the dissolution. Accordingly, in order to expedite the resolution of the whole problem, I then indicated to counsel that this was a proper case for an application under section 343(1) to have the dissolution declared void. The hearing was then adjourned.

Accordingly, on October 1, 1986, the plaintiff made another application by way of summons in chambers under section 307 of the Companies Act to have the dissolution declared void. All 3 applications came before me again on October 6, 1986 when I made the following orders:

(1) An order declaring the dissolution void;

(2) An order granting leave to the plaintiff to continue the proceedings against the company;

(3) No order on the application to defer the dissolution.

I then reserved the question of costs of these applications pending the outcome of the main action.

The question of costs has now come back to me following the settlement of the action between the plaintiff and the defendants' insurers. The plaintiff's case is that he is entitled to the costs of the application to declare the dissolution void. The liquidator's case is that he has performed his statutory duty and that in any case all the assets of the company had been distributed to the shareholders and that he no longer had any funds to meet an order for costs against the company or himself. In his submission, counsel for the liquidator stated that his client had done all that was required of him by placing the three advertisements in the newspapers and by requesting the directors for information on the affairs of the company and that these acts were all that could be expected of a reasonable liquidator.

What are the duties of a liquidator in a winding up as regards the liabilities of a company? Section 264 of the Companies Act provides that the property of a company shall, on its winding up, be applied *pari passu* in satisfaction of its liabilities (subject to the prescribed preferential payments). This is a statutory obligation which falls on the liquidator. It is not an absolute duty. On the other hand, where he is paid professionally to wind up a company, he must exercise a high standard of care and diligence commensurate with his professionalism. In the present case all the liabilities of the company had not been met prior to dissolution. *Prima facie,* the liquidator has failed to discharge his statutory obligation. In *Pulsford* v. *Devenish*[3], Farwell J. said that the duty of a liquidator was not confined to merely advertising for creditors but to write to those creditors of whose existence he knew, even though they had not sent in claims, and asked them if they had any claim. In *Re Armstrong Whitworth Securities Co. Ltd.*[4], the liquidator had in his possession 16,000 to 17,000 individual folders of the company's accident records but apart from advertising for claims, he did not write to these potential claimants. Jenkins J. held that the liquidator was in breach of his duty in not writing to each of these potential claimants to ask them whether they intended to claim; and that the large number of cases involved did not render this course impracticable. In *Austin Securities Ltd.* v. *Northgate & English Stores Ltd.*[5], the liquidators did not deal with a claim against the company as they were lulled to sleep by the company's solicitors who had sent a note of professional charges drafted in such a way as to mislead the liquidators into believing that the proceedings in court had been abandoned by the plaintiffs. The Court of Appeal held that the liquidators had failed in their duty in not asking the solicitors to clear up the position.

In the present case, the liquidator has deposed that he did not know of suit No. 4851/82 because

he was not told about it. In my view, this is no excuse. There is no evidence as to what he had actually done in the way of ascertaining claims, whether from the directors or from the records of this company. The winding up was a quick affair. He ought to have made a search in the High Court Registry or the Subordinate Courts Registry to find out whether there were any pending actions against the company. This is not an onerous obligation. He could have instructed solicitors to do that for him and they would have discovered the existence of this action.

Accordingly, I hold that the liquidator has not discharged his statutory duty. He ought to be ordered to pay the costs of the application to declare the dissolution void, and so I order.

Order accordingly.

Solicitors: *Murphy & Dunbar; Tan Lee & Choo.*

KUA LEE NGOH v. JAGINDAR SINGH t/a SPEEDWAY STATION

[O.C.J. (Rajah J.) March 17, 1987]

[Singapore – Civil Suit No. 1745 of 1982]

Bailment – Negligence – Car in defendant's custody stolen – Display of exemption notices – Whether defendants liable to pay damages for loss.

Contract – Bailment for reward – Car in defendant's custody stolen – Damages.

On May 8, 1981, the plaintiff's husband entrusted to the defendant a car belonging to the plaintiff for servicing. He had been sending the car for servicing to the defendant for about a year. He left the car in the open yard in front of the workshop building and there handed over the motor vehicle to the chief mechanic. As was his practice he left the key in the car and left for work. He was to collect the motor vehicle the same evening. He returned at 7 p.m. to collect the car. He saw the car and it had already been serviced. However, he was told that the chief mechanic had gone home and that he was to come back the next day to collect the car.

The plaintiff's husband returned on the following morning to collect the car but the car was not there. He was told that the car had been stolen. The car was eventually recovered in a damaged condition by the police and returned to the plaintiff.

The plaintiff's claim was for the loss of her car.

It was conceded by the defendant that this was a case of bailment for reward and that the onus was on him to show that the loss did not happen in consequence of his neglect to use appropriate care and diligence.

The defendant averred that he had taken all reasonable precautions in safeguarding the vehicle. In the alternative the defendant claimed that he had provided reasonably sufficient notice of the terms and conditions upon which the plaintiff's vehicle was being accepted on the defendant's premises for service by virtue of two exemption notices which had been placed in prominent and visible portions of the defendant's premises.

Held, allowing the plaintiff's claim: (1) on the exemption notices, the court would accept the evidence of the plaintiff's husband that he had not seen them nor had his attention been drawn to them by the defendant or his agents;

(2) against the background of car thefts in Singapore the defendant had not taken appropriate measures to immobilise the car and so make it difficult for the thieves to take it away. This could have been easily done by the defendant by the removal of the distributor arm and thus make it as immobile as one could possibly make a motor vehicle to be;

(3) judgment would be given for the plaintiff in the sum of $8998.75 and costs.

Cases referred to:

(1) *Cowan* v. *Blackwill Motor Caravan Conversions Ltd.* [1978] R.T.R. 421.

(2) *Chua Choon Kiat* v. *Tan Chong & Sons Motor Co. (S) Pte. Ltd.* [1972] 1 M.L.J. 5.

CIVIL SUIT.

Shriniwas Rai for the plaintiff.

Raymond Chan for the defendant.

Cur. Adv. Vult.

Rajah J.: On May 8, 1981, the plaintiff's husband entrusted to the defendant motor vehicle bearing registration No. EF5700 P (hereinafter called the "motor vehicle") for servicing. He had been sending the motor vehicle for servicing to the defendant for about a year. He left the car in the open yard in front of the workshop building and there handed over the motor vehicle to the chief mechanic. As was his practice he left the key in the car and left for work. He was to collect the motor vehicle the same evening. He returned at 7.00 pm to collect the motor vehicle but the chief mechanic was not in the service station. A male Indian at the petrol kiosk told him that the chief mechanic had gone home and that he was to come back on the following day to collect the motor vehicle. At the time when the plaintiff's husband went to collect his car on the same day he saw the car